

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

UNIT PETROLEUM COMPANY, UNIT
DRILLING AND EXPLORATION
COMPANY,

Plaintiffs,

vs.

JACK FROST, an individual,

Defendant and Third-Party Plaintiff,

vs.

UNIT CORPORATION,

Third-Party Defendant.

Case No.11-CV-627-JED-FHM

OPINION AND ORDER

Defendant Jack Frost's Second Motion to Compel, [Dkt. 143], has been fully briefed, [Dkt. 146, 147], and a hearing was held on September 24, 2013.

Background

Mr. Frost seeks an order compelling Unit Petroleum and Unit Drilling and Exploration Company (collectively Unit) to respond to Request for Production Nos. 13 and 22 which seek the production of geological or geophysical information from 1983 to the present which was used in decision-making with regard to oil and gas leases or interests in identified sections and prospects. [Dkt. 143, p. 1]. These requests were the subject of an earlier motion to compel, [Dkt. 32]. A hearing was held on the motion on January 18, 2013 wherein the court denied the motion to compel but stated it would be revisited if Unit takes the position that it took interests in oil properties based on work other than Mr. Frost's work and when Mr. Frost specifically identified the contested wells.

It has now been established that Unit will be asserting that its geologists relied on other geological information and did not use Mr. Frost's work in developing the identified wells. The instant motion re-urges Mr. Frost's need for Unit's response to Request for Production Nos. 13 and 22.

Analysis

Request No. 13 seeks the following:

REQUEST NO. 13: Produce all geological and geophysical information prepared or analyzed by any employee, contractor or consultant of Unit or a Unit Affiliate and relied upon by Unit or a Unit Affiliate from 1983 to present to take any oil & gas lease or other Interest in any Section or Prospect listed in Exhibit A.

[Dkt. 143, p. 1]. Request No. 22 seeks:

REQUEST NO. 22: Produce all documents regarding any geological or geophysical studies, reports, assessments or recommendations on which Unit or a Unit Affiliate based, in any way, its decision to obtain oil and/or gas Interest in any Section or Prospect listed in Exhibit A.

Id.

The information sought in the foregoing requests will not support Mr. Frost's breach of contract claims. Mr. Frost's claim is based on Unit's alleged breach of the Consulting Agreement between the parties. Mr. Frost does not contend that he requires the geological information to prove breach of the Consulting Agreement. Rather, Mr. Frost seeks the information in order to respond to a potential defense by Unit that Mr. Frost should not recover because it did not rely on Mr. Frost's work in acquiring interests in which Mr. Frost claims an overriding royalty interest.

It is not clear that Unit's lack of reliance on Mr. Frost's work would constitute a defense to Mr. Frost's claim. That issue will need to be decided by the trial court. To the extent that Unit may seek to introduce evidence concerning reliance on geology, Unit represented at the hearing that it will not seek to introduce detailed evidence about what specific geological information it relied upon in acquiring interests. Instead Unit may seek to introduce general testimony that it relied on more current information than Mr. Frost's work. This testimony has been disclosed to Mr. Frost in discovery. In addition, Unit represented that any geological information it may seek to introduce to illustrate that testimony has been fully disclosed to Mr. Frost.

In light of the questionable relevance of the information, the very broad scope of Mr. Frost's requests, the burden responding would place on Unit, the proprietary nature of the information, and the fact that Mr. Frost did not file his motion to compel until after the expiration of the discovery deadline, Defendant Jack Frost's Second Motion to Compel, [Dkt. 143], is DENIED.

Conclusion

Jack Frost's Second Motion to Compel, [Dkt. 143], is DENIED.

SO ORDERED this 30th day of September, 2013.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE